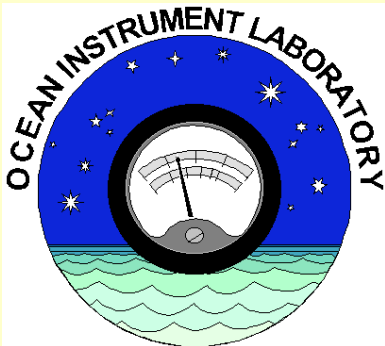


# EXPORT CONTROLS

UNOLS RVTEC Annual Meeting  
Moss Landing Marine Labs • 7 November 2007

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SoMAS



# UNCHARTED WATERS - PROCEED WITH EXTREME CAUTION!

- The author does not profess to be an expert.
- Even the “experts” proclaim ignorance on many issues discussed in this presentation.
- Laws and regulations are always changing.
- Information and opinion offered only as an Aid To Navigation.

# What is an Export?

“Any oral, written, electronic or visual disclosure, shipment, transfer, or transmission;

of commodities, technology, information, technical data, assistance, or software codes;

to anyone outside the USA including a US citizen; to a non USA individual or entity; or to a foreign embassy or affiliate.”

# What is a Deemed Export?

“Disclosure or transfer  
of export controlled software, technologies,  
or technical data;  
to a foreign entity or individual within the  
USA, including visual inspection, oral  
discussion, practice, or training.”

# What are Export Controls?

- U.S. laws and regulations.
- Govern the distribution of strategically important technology, services, and information.
- Driven by foreign policy and national security considerations.

# Regulatory and Enforcement Agencies

## Department of Commerce

- **Export Administration Regulations (EAR).** Applies to “dual use” technologies that have both commercial and military/security applications.

## Department of State

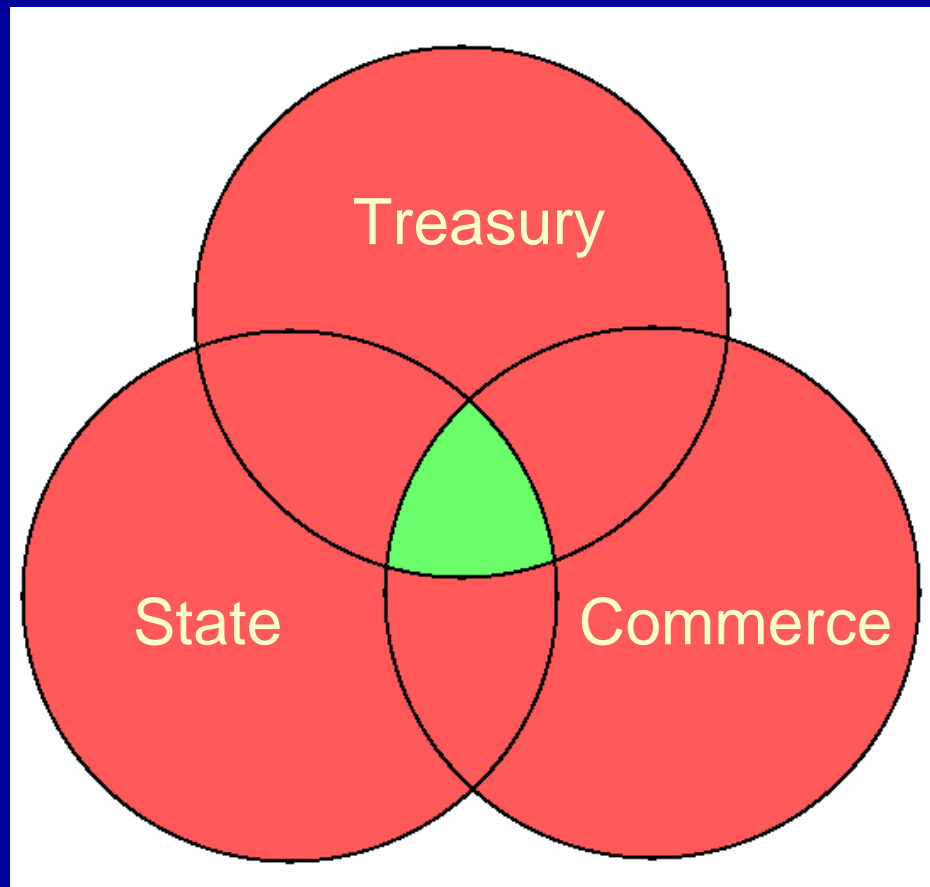
- **International Traffic in Arms Regulations (ITAR).** Applies to inherently military/satellite technologies.

## Department of Treasury

- **Office of Foreign Assets Control (OFAC).** Applies to transactions with countries subject to boycotts, embargoes, and restricted persons/organizations.

# Regulations are NOT Harmonized

Compliance with one set does not ensure compliance with all



# Compliance Methods

Determine exemption from regulation(s).

OR

Obtain export license(s).

Activity cannot take place until an export license is obtained or an exemption is determined.



# Penalties

## Commerce/EAR

- Criminal: up to \$1M/violation for institutions, \$250K/violation plus 10 years in prison for individuals.
- Civil: up to \$12K/violation.

## State/ITAR

- Criminal: up to \$1M/violation for institutions, \$1M/violation plus 10 years in prison for individuals.
- Civil: up to \$500K/violation.

## Treasury/OFAC

- Criminal: up to \$1M/violation for institutions, \$100K/violation plus 10 years in prison for individuals.
- Civil: up to \$55K/violation.

# Sanctions

In addition to criminal and civil penalties:

- Termination of export privileges.
- Suspension and/or debarment from federal government contracting.
- Loss of Federal funding.

# Points to Ponder

1. Ignorance is not an excuse.
2. *“Rational thought\* is not necessarily a basis for Agency decisions.”* -Anonymous relative of the author who obtained export license for GPS technology.
3. As usual, field oceanography pushes the edge of the envelope.
4. Issue does not appear to be on RVTEC radar as of July 2007 email.

\* admittedly from our perspective

# Certainly Not Just Our Problem

This issue is much, much bigger than us, but we are often the ones who are shipping the gear, demonstrating the equipment, or teaching the science party how to use it.

Furthermore, we sometimes do these things with people who are not employees / students of our own institution, and potentially with visitors or foreign observers.

# Recommendations

1. Be Proactive.
2. Discuss our needs and typical cruise situations.
3. Generate hypotheticals, get some regulatory feedback and decisions.
4. Establish as many exemptions as possible. Work to define “the line” beyond which export licenses are required.

# Possible Alternative:



**“Congratulations, you’re a test case!”**

# Export Controls Triggers

**What** is being exported / disclosed?

**Where** is something going?

**Who** is / are the other party?

# Some Exemptions

Public domain exemption

Fundamental research exemption

Education exemption

Employment exemption



# Public Domain Exemption

Export controls do not apply to information already published and widely available from:

- Libraries, bookstores, or newsstands.
- Trade shows, meetings, or seminars that are open to the public.
- Published patent information.
- Web sites accessible to the public.

# Fundamental Research Exemption

Export controls do not apply to basic or applied research at an accredited institution of higher learning in the USA, if the resulting information is ordinarily published and shared broadly in the scientific community.

***Hmmm #1: is work on a UNOLS vessel going to be considered “at the institution” and/or “in the USA”?***

The fundamental research exemption is voided if the institution:

- Accepts any restrictions on the publication of information.
- Gives a sponsor the right to approve publications.
- Limits access to foreign nationals.
- Applies these limitations to any sponsor.

# Education Exemption

ITAR: Can export information (not technology) that is “general scientific, mathematical, or engineering principles commonly taught in USA universities.”

EAR: No need to obtain a license for “educational information” released by instruction in catalog course and associated teaching labs.

***Hmmm #2: “Thesis Research” is a course at many universities, is teaching a needed technique to a grad student covered under this exemption?***

# Full Time Employee Exemption

No license is required for a foreign national in the USA to receive unclassified technical data if foreign national is:

- Full time regular employee of your institution.
- Permanent resident in the USA throughout the period of employment.
- Not a national of a T-5 country (Cuba, Iran, North Korea, Sudan, or Syria).
- Institution informs employee in writing that the data may not be transferred to other foreign persons without prior written approval of the US State Department.

***Hmmm #3-5: Is a Grad student on support an employee? How about students/faculty from other institutions? Is a ship at sea “in the USA”?***

# “What” Hypotheticals

What equipment is exempt from controls?

Green=probably, Yellow=maybe, Red=maybe not.

- Standard or SBAS (WAAS/EGNOS/MSAS) GPS.
- Hydrographic gear - CTDs, ADCPs.
- Telemetry gear - Argos, Iridium, other Satcom.
- High precision survey quality GPS.
- GPS attitude systems.
- Multibeam systems.

# “Where” Hypotheticals

Circumstances that constitute export:

Green=prob. not, Yellow=maybe,

Orange=probably, Red=certainly.

- Equipment that remains on a US-flagged research vessel, even if that vessel docks at a foreign port.
- Equipment transshipped under Customs seal to a US-flagged ship.
- Gear deployed in international waters (moorings, drifters).
- Equipment deployed cryptically (subsurface moorings).
- Equipment physically taken past foreign Customs.

# “Who” Hypotheticals

Who is covered by exemptions?

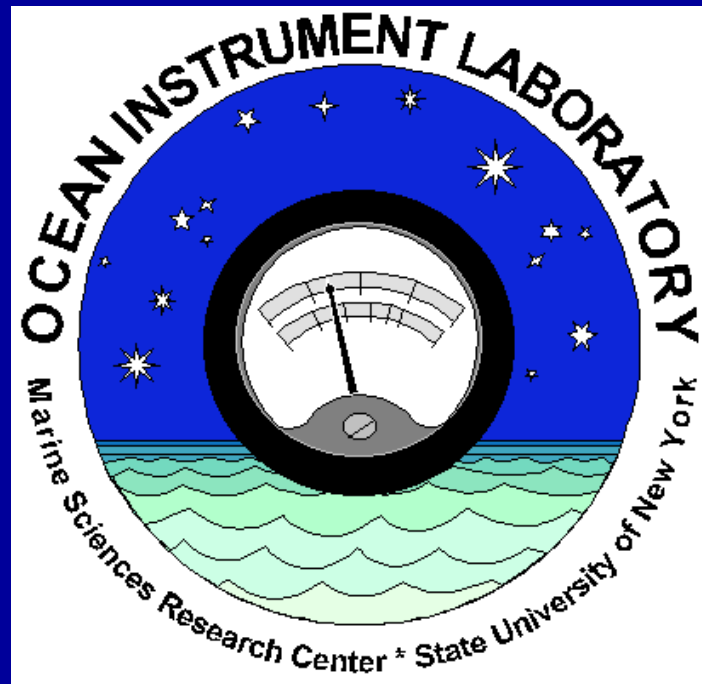
Green=probably, Yellow=maybe, Red=maybe not.

- Foreign national faculty, staff, and full time students from your institution, at your institution.
- Foreign nationals from other institutions.
- Foreign nationals on the ship at sea.
- Foreign observers / visitors to the ship.
- Staff at foreign institutions you visit while in port.

# Open Discussion



*Thank you!*



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